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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,301	02/18/2004	Jordan Dawes	JDI001	4831
28848	7590	12/11/2006		
TOPE-MCKAY & ASSOCIATES 23852 PACIFIC COAST HIGHWAY #311 MALIBU, CA 90265			EXAMINER SINGH, SUNIL	
			ART UNIT 3673	PAPER NUMBER

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/781,301

Applicant(s)

DAWES, JORDAN

Examiner

Sunil Singh

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8-21,23-27,29-34,36-39,41-55 and 57-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-21,23-27,29-34,36-39,41-55,57-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

The examiner cited numerous art that read on applicants broadly recited claims. However, in order to reduce the length of the office action the examiner did not apply every piece of art that anticipates applicants' claims. Applicant should carefully review all cited material and amend claims to define over them.

#### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1,3-6,8-21,23-27,29-34,36-39,41-55,57-68 are rejected under 35

U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 line 9 calls for "at least one fastener", at line 5, "two fasteners" is called for; it is unclear how they are related.

Claim 1 line 9 recites "an attachment for connecting with at least one fastener", at line 12, the attachment is then connected with the "fastener"; it is unclear this fastener relates to the ones called for at lines 5 and 9. Throughout the claims similar confusion exists, too numerous to mention each one specifically; applicant should review claims carefully and correct all indefiniteness and antecedent basis errors.

Claim 12 line 8, "a plurality of fasteners" is recited; it is unclear how this relates back to the fasteners called for in claims 12 and 1.

Claim 27 is similarly rejected as claim 12 above.

Claim 30 is similarly rejected as claim 12 above.

Claim 34 is similarly rejected as claim 1 above.

Claim 45 is similarly rejected as claim 12 above.

Claim 61 is similarly rejected as claim 12 above.

Claim 63 is similarly rejected as claim 12 above.

Claim 68 is similarly rejected as claim 12 above.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting

directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1,21,23,25,29,31,34,54,57,59,62,64,67 are rejected under 35 U.S.C. 102(b) as being anticipated by Waters (US 2792266).

Waters discloses a device comprising a pair of support members (4,5, see Fig. 1), two fasteners (7), support securing members (15a, see Fig. 4), attachment (8).

5. Claims 1,3,21,23,25,26,29,31,32,33,34,36,37,54,55,57,59,60,62,64,65,66,67 are rejected under 35 U.S.C. 102(b) as being anticipated by Marlow et al. (US 5868694).

Marlow et al. discloses a device comprising a pair of support members (14), two fasteners(40), two support securing members (21,24), attachment (46).

6. Claims 1,3,23,25,29,31,34,36,37,55,57,59,62,64,67 are rejected under 35 U.S.C. 102(a) as being anticipated by Greenfield et al. (US 2003/0182726).

Greenfield et al. discloses a device comprising a pair of support members (20), two fasteners (32), two support securing mechanism (12), attachment (30).

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7. Claims 1,3,4,5,6,8,10,19,20,21,23,25,29,34,36,37,38,39,41,43,44,52,53,54,55,57, 59,62,67 are rejected under 35 U.S.C. 102(b) as being anticipated by Thomsen (US 1546813).

Thomsen discloses a device comprising a pair of support members (14), two fasteners (see Fig. 40, support securing mechanism (11,12), attachment (39), member (14) pivots relative member (12), stop mechanism (slot this is considered as openings at bottom of member 14; projection this is considered as member 17, when member (19) tightens up there is no pivoting).

8. Claims 1,3,4,5,6,8,10,11,19,20,23,25,26,29,32,34,36,37,38,39,41,43,44,52,53,55, 57,59,60,62,65,67, rejected under 35 U.S.C. 102(b) as being anticipated by Johnson (US 924075).

Johnson discloses a device comprising a pair of support members (p,q), two fasteners (b'), two support member securing mechanism (e,h), attachment (c'), member (p) pivots with respect to (e,h)(see page 1 lines 10-15), stop mechanism (slot this is considered as r, projection (this is considered as member s), when member (s) tightens up there is no pivoting).

Claims 1,3,4,21,23,25,26,27,29,30,31,32,33,34,36,37,54,55,57,59,60,61,62,63,64,65,66, 67,68 are rejected under 35 U.S.C. 102(b) as being anticipated by Lewis Jr. (US 2736131).

Lewis, Jr. teaches a device comprising four support members (18,23), four fasteners (27), four support securing mechanisms (20-23), attachment (8). Member (18) pivots (see col. 2 line 46). Adjustable height (see col. 2 line 25).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 9,24,42,58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomsen.

Thomsen discloses the invention substantially as claimed. However, Thomsen is silent about the attachment comprising a handcuff. It would have been considered obvious to use an handcuff as an attachment since such a modification can prevent a prisoner who is being treated at a hospital from escaping.

11. Claims 12-14,30,45-47,61,63,68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Lewis, Jr. (US 2736131).

Johnson discloses the invention substantially as claimed. However, Johnson lacks a second pair of support members with corresponding fasteners, securing mechanism and attachment device for connecting to the corresponding number of fasteners. Lewis, Jr. teaches a second pair of support members with corresponding fasteners, securing

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mechanism and attachment device for connecting to the corresponding number of fasteners (see Fig. 2). It would have been considered obvious to one of ordinary skill in the art to modify Johnson to include the teachings of Lewis, Jr. in order to support a larger body portion of a patient, such as the back.

12. Claims, 1,3,23,24,25,29,32,33,34,36,37,55,57,58,59,62,65,66,67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepard in view of duplication of parts.

Shepard discloses a device comprising a support member (25,30), a fastener (see Fig. 3, (40)), a support member securing mechanism (12) having an attachment portion (26).

An attachment (see Figs. 3,10). Telescoping tube (see col. 2 line 15+). Shepard discloses the claimed invention except for a second support member with corresponding fastener, securing mechanism and attachment device for connecting to the corresponding fastener. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an additional support structure, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

With regards to claims 24,58, it would have been considered obvious to use an handcuff as an attachment since such a modification can prevent a prisoner who is being treated at a hospital from escaping.



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13. Claims 4-6,8-10,19-20,38-39,41-43,52,53,are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepherd in view of duplication of parts as applied to appropriate claims above and further in view of McConnell (US 4576501).

Shepherd (once modified) discloses the invention substantially as claimed. However, the (once modified) Shepard is silent about the support member securing mechanism having a stop mechanism and allowing for a support to be pivotable therewith.

McConnell teaches support member securing mechanism (see Figs. 5,6, (60) having a stop mechanism and allowing for a support (14,16) to be pivotable therewith. It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Shepherd to include the stop mechanism as taught by McConnell in order to orient the attachment device in a desired position.

With regards to claims 9, 42, it would have been considered obvious to use an handcuff as an attachment since such a modification can prevent a prisoner who is being treated at a hospital from escaping.

14. Claims 21, 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheppard in view of duplication of parts as applied to appropriate claims above and further in view of Matsuoka(US 2909345).

Sheppard (once modified) discloses the invention substantially as claimed. However, the (once modified) Sheppard is silent about his securing mechanism being flat.

Matsuoka teaches a securing mechanism being flat (see Fig. 4). It would have been considered obvious to one of ordinary skill in the art to further modify the (once

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modified) Sheppard to have a flat securing mechanism as taught by Matsuoka in order to make the enhancer more versatile by being able to position the enhancer at the center of a bed.

15. Claims 31,64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheppard in view of duplication of parts as applied to appropriate claims above and further in view of Matsuoka(US 2909345).

Sheppard (once modified) discloses the invention substantially as claimed. However, the (once modified) Sheppard is silent about his support being arcuate. Matsuoka teaches a support being arcuate (see Figs. 1). It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Sheppard to have an arcuate shaped support member as taught by Matsuoka in order to make the enhancer more versatile by positioning an attachment closer to a patient.

***Allowable Subject Matter***

16. Claims 15-18, 48-51 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

17. Applicant's arguments with respect to claims 1 and 34 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US. Patents 1011150, 3826490, 4561549 all anticipate numerous claims; however, in order to reduce a length of the office action there were not applied. Applicant should carefully amend the claims to define over these references.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM:

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Engle Patricia can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sunil Singh  
Primary Examiner  
Art Unit 3673



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